

DOCKET FILE COPY ORIGINAL ORIGINAL

Before the

**Federal Communications Commission**

Washington, D.C. 20554

RECEIVED

MAR 10 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Service Rules for the 746-764 and 776-794 )  
MHz Bands, and Revisions to Part 27 of the )  
Commission's Rules )

WT Docket No. 99-168

To: The Commission

**U S WEST WIRELESS, LLC**

**OPPOSITION TO AND COMMENTS ON PETITIONS FOR RECONSIDERATION**

Pursuant to Section 1.429(f) of the Commission's rules and the Public Notice of February 25, 2000,<sup>1</sup> U S WEST Wireless, LLC ("U S WEST"), hereby responds to petitions for reconsideration of the *First Report and Order* in the above-referenced proceeding.<sup>2</sup> For the reasons discussed herein, the Commission should deny the petitions for reconsideration submitted by the Association of Public-Safety Communications Officials-International, Inc. ("APCO") and the National Association of Broadcasters ("NAB").

**I. MORE STRINGENT OUT-OF-BAND EMISSION LIMITS ARE UNNECESSARY TO PROTECT PUBLIC SAFETY LICENSEES**

In its petition, U S WEST demonstrated that the out-of-band emission ("OOBE") limits of Section 27.53 of the Commission's rules will unnecessarily limit commercial operations in the 747-

---

<sup>1</sup> 47 C.F.R. § 1.429(f); Public Notice, *Wireless Telecommunications Bureau Sets Comment Schedule for Petitions for Reconsideration of First Report and Order in WT Docket No. 99-168, Establishing Commercial Service Rules for 700 MHz Band*, DA 00-397 (rel. Feb. 25, 2000).

<sup>2</sup> *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, First Report and Order*, WT Docket No. 99-168, FCC 00-5 (released Jan. 7, 2000), 65 Fed. Reg. 3139 (Jan. 20, 2000) ("*First Report and Order*").

No. of Copies rec'd 0+4  
List ABCDE

762 MHz and 777-792 MHz bands.<sup>3</sup> APCO, however, argues that: the OOB limit base stations should be tightened further to  $87 + 10 \log P$ ; that even the  $65 + 10 \log P$  level for mobile transmitters “may be too low, and could lead to interference when 30 MHz subscriber units are in close proximity to public safety units;”<sup>4</sup> that lower levels “would produce dangerously large ‘coverage holes’ where adjacent band public safety mobile/portable radios would be unusable;” and that the Commission has failed to consider “the aggregate impact of OOB from multiple sites, and multiple transmitters at a single site, especially in a cellular infrastructure.”<sup>5</sup>

To start, APCO’s contentions regarding any detrimental impact to public safety licensees are necessarily speculative, as there is no equipment commercially available for public safety use in this band.<sup>6</sup> Furthermore, and as U S WEST noted, there was no discussion in the *First Report and Order* -- nor does APCO suggest -- of any means by which public safety licensees themselves can minimize OOB concerns.<sup>7</sup> As the Commission has acknowledged, public safety licensees have traditionally been inefficient users of spectrum.<sup>8</sup> Imposing an unnecessarily stringent OOB limit on commercial licensees would undermine the Commission’s efforts to effectively manage 700

---

<sup>3</sup> See U S WEST Wireless, LLC, Petition for Expedited Reconsideration, filed Feb. 3, 2000, at 5-10 (“U S WEST Petition”).

<sup>4</sup> Petition for Reconsideration of APCO and Opposition to Emergency Petition for Reconsideration of U S WEST Wireless LLC, filed Feb. 22, 2000, at 2, n.4 (“APCO Petition”).

<sup>5</sup> *Id.* at 3, 4.

<sup>6</sup> See U S WEST Petition at 6 n.17.

<sup>7</sup> See *id.*

<sup>8</sup> See *The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements For Priority Access Service, Second Notice of Proposed Rulemaking*, 12 FCC Rcd 17706, 17715 ¶ 17 (1997).

MHz public safety spectrum by undermining public safety licensees' incentives use spectrum efficiently.<sup>9</sup> The Commission should not perpetuate past mistakes by granting APCO's petition.

More fundamentally, U S WEST's and other wireless carriers' experience with traditional digital cellular and broadband PCS systems tends to contradict APCO's speculation. For CDMA networks, existing industry standards require OOB limits that essentially mirror both the PCS and cellular  $43 + 10 \log P$  standard, *as well as* a  $65 + 10 \log P$  per 6 kHz standard.<sup>10</sup> U S WEST is unaware of any instances in which this requirement has posed harmful interference problems to adjacent channel licensees, and imposing a more restrictive standard on 700 MHz commercial licensees is unnecessary and unwise. While U S WEST believes that the generally applicable  $43 + 10 \log P$  standard is sufficient, a uniform  $65 + 10 \log P$  per 6.25 kHz standard for commercial equipment -- at minimum for subscriber-side equipment -- can accommodate commercial licensees. As SBC notes, a more stringent requirement -- even for the 6 MHz of "guardband" spectrum, much less the 30 MHz of spectrum subject to auction May 10th -- would amount to "overkill," unnecessarily limiting carriers' ability to provide reliable service.<sup>11</sup>

APCO notably does not oppose U S WEST's proposal that commercial licensees be allowed to negotiate alternative OOB limits, but asserts that there are practical problems with its implementation.<sup>12</sup> U S WEST submits that commercial and public safety licensees will have

---

<sup>9</sup> See *id.* at 17711 ¶ 6 (stating that "we face the risk of perpetuating difficulties that the public safety community has faced in the past[,] including "inefficient spectrum use").

<sup>10</sup> See ANSI J-STD-008, § 3.1.4.1.2; TIA IS-95-A/IS-95-B, § 7.1.4.

<sup>11</sup> See Comments of SBC Communications, Inc., filed Jan. 18, 2000, at 1-2.

<sup>12</sup> APCO Petition at 5-6. To confirm, U S WEST has proposed that commercial and public safety licensees be allowed to negotiate, but in no event would attenuation be less stringent than  $43 + 10 \log P$ . Also, and contrary to APCO, U S WEST's proposal should be considered in the context of either the current OOB limits or U S WEST's recommended uniform  $65 + 10 \log P$

incentives to work through the issues involved in such negotiations, and that the potential benefits, in terms of spectrum efficiency and reliable commercial and public safety communications, demonstrate that the public interest is served by U S WEST's proposal. Also, the fact that the commercial licensee is "likely to be in place before public safety agencies have even filed applications" is not likely to be as significant an obstacle as APCO contends.<sup>13</sup> Public safety licensees and equipment manufacturers will know -- likely by the close of the auction this spring or summer -- which commercial carriers are authorized to provide service in the 700 MHz band and which technologies are likely to be used. Thus, there will be considerable time for competing vendors to develop compliant and spectrum-efficient commercial *and* public safety equipment.

Also, CMRS *and* public safety licensees have considerable experience negotiating RF interference issues with multiple licensees. Furthermore, as the Commission's experience with 2 GHz microwave relocation attests, commercial licensees in some cases may have market-based incentives to negotiate with public safety licensees in order to ensure reliable commercial service.<sup>14</sup> U S WEST notes that allowing public safety licensees to negotiate with new commercial licensees could help facilitate the DTV transition in the public safety spectrum;<sup>15</sup> where it makes economic sense, it may in some instances help enable the former to better afford the equipment necessary to

---

<sup>12</sup> (...continued)  
per 6 kHz attenuation requirement; in no event should the Commission adopt more stringent OOB limits than those currently in the rules.

<sup>13</sup> APCO Petition at 5.

<sup>14</sup> Commercial licensees will not, of course "relocate" public safety licensees to other spectrum. Nevertheless, the Commission's experience with broadband PCS licensees' relocation of incumbent fixed microwave licensees -- including many local government licensees -- demonstrates that commercial licensees may have incentive to offer other licensees even premium incentives where effective commercial deployment is at stake.

<sup>15</sup> *See infra* Section II.

accommodate more conventional CMRS OOB emission limits, thus promoting spectrum efficiency in the 700 MHz public safety spectrum.<sup>16</sup> For these reasons also, commercial and public safety licensees should be allowed to reach alternative OOB limit arrangements.

## **II. THE COMMISSION HAS DISCRETION TO ACT ON REGULATORY REQUESTS TO IMPLEMENT VOLUNTARY AGREEMENTS BETWEEN BROADCASTERS AND NEW COMMERCIAL LICENSEES**

In the *First Report and Order*, the Commission stated its intent to “consider specific regulatory requests needed to implement voluntary agreements reached between incumbent licensees and new licensees in these bands.”<sup>17</sup> The potential public interest benefits of this policy -- early transition to DTV and expeditious deployment of commercial services -- are obvious.<sup>18</sup> In fact, Chairman Kennard recently discussed the public interest benefits of this approach, stating:

[W]hile much of this spectrum currently is unoccupied, TV broadcasters will continue to use much of the band until the end of the transition to digital television. That is, unless we let the market work and permit negotiations between the auction winners and the incumbent broadcasters so that broadcasters complete their transition to digital sooner rather than later. So I urge incumbent broadcasters to voluntarily negotiate with incoming licensees, so that this valuable spectrum can be used quickly to its maximum capacity. While negotiations and voluntary agreements to accelerate moving to new assignments can be

---

<sup>16</sup> See *Public Safety Second NPRM*, 12 FCC Rcd. at 17717 ¶ 23 (noting “that a continuing problem faced by public safety agencies is the lack of adequate funding to carry out their functions” and “one of the principal goals of this proceeding should be the establishment of policies and incentives that will promote the ability of public safety agencies to afford to take advantage of the latest communications capabilities”). For example, as a condition of an agreement, a commercial licensee may help the public safety licensee cover additional equipment costs needed to accommodate the alternative OOB limit. In this regard, the commercial licensee may, in turn, have more bargaining leverage vis-a-vis equipment manufacturers than a single public safety agency.

<sup>17</sup> *First Report and Order* ¶ 145.

<sup>18</sup> See *Service Rules for the 746-764 and 776-794 MHz bands, and Revision to Part 27 of the Commission's Rules, Notice of Proposed Rulemaking*, WT Docket No. 99-168, FCC 99-97, ¶ 99 (rel. June 3, 1999).

accomplished under existing case-by-case waivers, I would like to see an easier, more market-driven process.<sup>19</sup>

U S WEST agrees that “creative, market-driven approaches that will serve the public’s interest in having new high-speed wireless services as well as maintaining local television service” are appropriate and well within the Commission’s discretion.<sup>20</sup>

There is no need for the Commission to reconsider this provision of the *First Report and Order*, as the Commission has taken into account broadcast viewers’ interests during the DTV transition and the public interest in facilitating rapid deployment of commercial 700 MHz services. NAB, however, asserts that this decision “contravenes Congress’ clear intent to insure that viewers do not lose their existing analog television service on these bands during the DTV transition” and “conflicts with Congress’ long-standing policy of preserving access to free broadcast television.”<sup>21</sup>

As a threshold matter, NAB misquotes the relevant statutory language, stating that Section 337(d)(2) of the Act “requires the Commission to ‘establish any additional restrictions necessary to protect full-service analog television service and digital television service during a transition to digital television service.’”<sup>22</sup> Section 337(d)(2) actually provides that:

In establishing service rules with respect to licenses granted pursuant to this section, the Commission . . . shall establish any additional *technical* restrictions necessary to protect full-service analog television service and digital television service during a transition to digital television service.<sup>23</sup>

---

<sup>19</sup> Chairman William E. Kennard, Federal Communications Commission, “Wire Less Is More,” Address to the Cellular Telecommunications Industry Association, New Orleans, Louisiana, February 28, 2000.

<sup>20</sup> *See id.*

<sup>21</sup> NAB Petition for Partial Reconsideration, filed Feb. 22, 2000, at 2-5.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> 47 U.S.C. § 337(d)(2).

NAB's omission is significant in that "technical restrictions," as opposed to "restrictions" generally, go to RF interference protections. This conclusion is affirmed by Section 337(d)'s legislative history:

The conferees expect that, for the period during the transition, the Commission will ensure that full-power analog and digital television licensees will operate *free of interference* from public safety service licensees, and conversely, that public safety service licensees will operate free of interference from analog and digital television licensees.<sup>24</sup>

The Commission, consistent with Congress's intent, requires that commercial and public safety licensees in the 700 MHz band provide incumbent broadcasters with full RF interference protection.<sup>25</sup> Thus, the Commission's rules fully comply with its Section 332(d)(2) obligations.

In addition, the DTV transition simulcast benchmarks and recovery deadline, while subject to general congressionally-imposed parameters, are largely Commission-adopted, rule-based requirements.<sup>26</sup> The statutory December 31, 2006 date simply establishes a deadline, subject to narrow exceptions, beyond which incumbent broadcasters may not operate in the 700 MHz spectrum -- it does *not* require that analog broadcast service be provided through that date.<sup>27</sup> Indeed, the Commission has already determined that under the Balanced Budget Act of 1997, it still "ha[s]

---

<sup>24</sup> H.R. Conf. Rep. No. 105-217, at 580 (1997) (emphasis added).

<sup>25</sup> 47 C.F.R. § 27.60.

<sup>26</sup> See 47 U.S.C. §§ 336(a)-(b) and H.R. Conf. Rep. No. 104-458 at 161 (1996) (Congress "leaves to the Commission the determination of when such licenses shall be returned and how to reallocate returned spectrum"); *id.* § 337(e)(1) ("[a]ny person who holds a television broadcast license to operate between 746 and 806 [MHz] may not operate at that frequency after the date on which the digital television service transition period terminates, *as determined by the Commission*" (emphasis added)).

<sup>27</sup> See 47 U.S.C. § 309(j)(14)(A) (a "license that authorizes analog television service may not be renewed to authorize such service for a period *that extends beyond* December 31, 2006").

discretion to set an earlier deadline.”<sup>28</sup> NAB, moreover, is confusing broadcasters’ interests with viewers’ interests; Congress’ and the Commission’s “clear intention” in adopting DTV transition simulcast requirements was to protect the latter, not the former. The Commission has already acknowledged that the impact of the DTV transition on viewers’ interests is significantly mitigated when alternative means of transmission media are available, “such as cable, DBS, and wireless cable;”<sup>29</sup> in short, it is viewers’ access to the content of programming, not the medium of transmission, that the Commission must protect.

As set forth in the *First Report and Order*, the Commission’s standards for granting specific regulatory requests expressly provide for protection of viewers’ interests:

[W]e would also consider loss of service to the broadcast community of the licensee. For example, we would consider the availability of the licensee’s former analog programming within the service area, through simulcast of that programming on the licensee’s DTV channel or distribution of the programming on cable or DBS, or the availability of similar broadcast services within the service area (e.g., whether the lost service is the only network service, the only source for local service, or the only source for otherwise unique broadcast service).<sup>30</sup>

NAB’s petition ignores this fact, wrongly implying that the Commission has not accounted for the interests of broadcast viewers.

---

<sup>28</sup> *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Rcd 6860, 6889 ¶ 83 (1998). The Commission has also expressly left open the possibility of allowing an immediate transition from analog to DTV in some instances. *See Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, Notice of Proposed Rulemaking*, MM Docket No. 00-39, FCC 00-83, ¶ 14 n.18 (rel. March 8, 2000) (citing *Recon of Fifth Report and Order*, 13 FCC Rcd. at 6887 ¶ 78).

<sup>29</sup> *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order*, 12 FCC Rcd. 12809, 12850-51 ¶ 100 (1997).

<sup>30</sup> *First Report and Order* ¶ 145. The Commission affirmed this approach for commercial licensees using the 6 MHz of guardband spectrum. *Service Rules for the 746-794 and 776-794 MHz Bands, and Revision to Part 27 of the Commission’s Rules, Second Report and Order*, WT Docket No. 99-168, FCC 00-90, ¶ 114 (rel. March 9, 2000).



Clearly, it is within the Commission's authority to consider regulatory measures designed to ensure that the legitimate objective of facilitating the deployment of viable commercial services in the 700 MHz band is appropriately balanced with the interests of broadcast viewers. Incumbent broadcasters are not prejudiced by such measures, and there is no violence to the underlying statute. NAB's petition should therefore be denied.

### III. MISCELLANEOUS ISSUES

***Transmit Power Limits.*** In its petition, U S WEST demonstrated that the public interest would be served by modifying the transmit power limits to accommodate TDD technologies and provide commercial licensees additional flexibility.<sup>31</sup> A number of petitioners have echoed U S WEST's concerns.<sup>32</sup> U S WEST further submits that modifying the transmit power limits, rather than eliminating the frequency pairings of the rules as proposed by ArrayComm, is a far more appropriate and measured means of promoting these objectives.<sup>33</sup> U S WEST's proposal will accommodate TDD technologies without undermining the Commission's objective of facilitating the deployment of third generation ("3G") mobile wireless services in this spectrum.

***Nationwide Bid Withdrawal Procedures.*** U S WEST urged the Commission to require that any nationwide bid withdrawal provisions adopted for a 30 MHz nationwide aggregation also apply to a 20 MHz nationwide aggregation.<sup>34</sup> The Wireless Telecommunications Bureau has since adopted such a procedure for a 30 MHz nationwide aggregation, but declined to apply such procedures to regional aggregations of licenses, holding that parties "present[ed no] compelling

---

<sup>31</sup> U S WEST Petition at 3-4.

<sup>32</sup> See TRW Inc., Petition for Reconsideration or Clarification, filed Feb. 11, 2000, at 4-9; Adaptive Broadband Corporation, Petition for Reconsideration, filed Feb. 22, 2000, at 3-6.

<sup>33</sup> See Petition for Reconsideration of ArrayComm, Inc., filed Feb. 22, 2000, at 4-12.

<sup>34</sup> U S WEST Petition at 4-5.

reasons why the Bureau *can or should* apply the special rule to those bidders that face less exposure.”<sup>35</sup> Here, U S WEST is asking the Commission -- not the Bureau acting under delegated authority -- to reconsider this limitation on the applicability of the nationwide bid withdrawal provisions. Furthermore, the Commission’s and Bureau’s concern for an entity’s exposure after bidding on a 30 MHz nationwide aggregation -- whereby “a bidder might be left with a potentially large subset of licenses that it does not wish to win given its all-or-nothing strategy”-- applies with equal force to a 20 MHz nationwide aggregation bid.<sup>36</sup>

## CONCLUSION

The Commission should deny the petitions for reconsideration of NAB and APCO to the extent discussed herein. The Commission should also modify the transmit power limits to better accommodate TDD technologies and flexible service deployment, and extend nationwide bid withdrawal procedures to a bidder’s 20 MHz nationwide aggregation strategy.

Respectfully submitted,

**U S WEST WIRELESS , LLC**

By:

  
 Julia Kane  
 Jeffry Brueggeman  
 U S WEST, INC.  
 1020 19th Street, N.W., Suite 700  
 Washington, D.C. 20036  
 (303) 672-2722

*Its Attorneys*

March 10, 2000

---

<sup>35</sup> Public Notice, *Auction of Licenses in the 747-762 and 777-792 MHz Bands*, Report No. AUC-00-31-C, DA 00-292, at 32-36 (rel. Feb. 18, 2000) (emphasis added).

<sup>36</sup> *Id.*